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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,251	12/14/2001	Gary M. Rapps	CM01990K	8709
22917	7590	09/14/2005	EXAMINER	
MOTOROLA, INC. 1303 EAST ALGONQUIN ROAD IL01/3RD SCHAUMBURG, IL 60196			NI, SUHAN	
			ART UNIT	PAPER NUMBER
			2646	

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application N .</b> 10/020,251	<b>Applicant(s)</b> RAPPS, GARY M.	
	<b>Examiner</b> Suhan Ni	<b>Art Unit</b> 2646	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/14/01</u> . | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

1. The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group **Art Unit 2646**.
2. This communication is responsive to the application filed 12/14/2001.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 1-9, 14 and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Sato (U. S. Pat. - 6,721,433).

Regarding claims 1 and 18-19, Sato discloses a communication device for use behind the ear (Figs. 3-4), comprising: a housing having a first section (13) and a second section (15), and a sound delivery tube (17) coupled to the second section of the housing, wherein the second section of the housing rotates with respect to the first section of the housing within a prescribed range of angular displacement as to allow user-definable depth adjustability of at least a portion of the sound delivery tube into an ear canal as claimed.

Regarding claims 2-7, Sato further discloses the communication device, wherein the prescribed range of angular displacement allows up to approximately fifteen degrees of angular displacement on at least one side of a neutral axis (Figs. 3-4).

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Regarding claim 8, Sato further discloses the communication device, wherein a position of the sound delivery tube is maintained via friction (Figs 5A-5B).

Regarding claim 9, Sato further discloses the communication device, wherein the sound delivery tube comprises an ear-tip, and the ear-tip (19) assists in maintaining concentricity of at least a portion of the sound delivery tube with respect to an ear canal axis.

Regarding claim 14, Sato further discloses the communication device, further comprising electronic circuitry (19) connected to at least one of the first section and the second section of the housing.

Regarding claim 17, Sato further discloses the communication device, wherein the sound delivery tube (19) is constructed from a material selected from a group consisting of: rubber and plastic as claimed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-13 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato (U. S. Pat. - 6,721,433).

Regarding claims 10-13, Sato does not clearly teach all the details as claimed. Since altering the size or dimension of each element of the device for fitting different users is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide suitably altered elements, such as the headband,

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or the sound tube for the device as an alternate choice, in order to provide more comfortable fitting for user's ear.

Regarding claims 15-16, Sato does not clearly teach a semi-rigid or flexible sound tube as claimed. Since providing a rubber or suitable plastic material for the sound tube of a headphone or headset is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide suitably material, such as rubber for the sound tube of the device as an alternate choice, in order to provide more comfortable fitting for user's ear.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

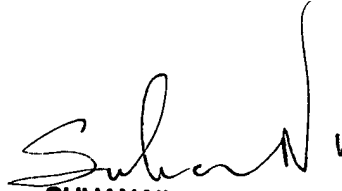
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is **(571)-272-7505**, and the number for fax machine is **(571)-273-7505**. The examiner can normally be reached on Tuesday and Thursday from 10:00 am to 8:00 pm, and may be reached on Monday, Wednesday and Friday from 10:00 am to 8:00 pm. If it is necessary, the examiner's supervisor, **Sinh N. Tran**, can be reached at **(571)-272-7564**.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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8. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (571)-272-2600, or please see <http://www.uspto.gov/web/info/2600>.

September 8, 2005

  
**SUHAN NI**  
**PRIMARY EXAMINER**